

REMARKS

Favorable reconsideration and allowance of the subject application are respectfully requested. Claim 2-12 and 14-19 are pending in the present application, with claims 15, 18 and 19 being independent. Claims 18-19 have been added by this amendment.

Interview Summary

Applicant's representative would like to thank the Examiner Mr. Jared J. Fureman and the Primary Examiner Mr. Karl Frech, for the interview conducted on Monday, December 9, 2002. During the interview, Applicant's representative discussed the differences between the claimed invention and the cited prior art. Furthermore, Applicant's representative pointed out that *Jenkins et al.* is non-analogous art.

Claim Rejections under 35 U.S.C. §103

The Examiner rejected: claims 8, 10, 14 and 15 under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art in view of *Jenkins et al.* (U.S. 6,264,104); claims 2-4 under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art in view of *Jenkins et al.* and further in view of *Davis et al.* (U.S. 6,088,450); claims 5-7, 12, 16 and 17 under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art in view of *Jenkins*

et al. and further in view of *Xydis* (U.S. 6,070,240); and claims 9 and 11 under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art in view of *Jenkins et al.* and further in view of *Zancho* (U.S. 5,814,798). These rejections are respectfully traversed insofar as they pertain to the presently pending claims.

1. Non-analogous art

As discussed during the personal Interview, Applicant respectfully submits that *Jenkins et al.* is not analogous prior art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." See *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992); *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); and *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992).

If the prior art is outside the inventor's field of endeavor, the inventor will only be presumed to have knowledge of prior art that is reasonably pertinent to the problem being addressed. See *In re Wood*, 202 USPQ 171 (C.C.P.A. 1979). The Examiner is also charged to consider "'the reality of the circumstances'...in other words, common sense" to determine what field a person of ordinary

Application No. 09/654,066

skill in the art would reasonably be expected to look. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Jenkins et al. is directed to a vending device with a remote electronic shopping facility, whereas the present invention is directed to an X-ray examining apparatus including an operating unit that operates the X-ray examining apparatus. Therefore, Applicant respectfully submits that the teachings of *Jenkins et al.* is not in the field of Applicant's endeavor.

It is further evidenced that *Jenkins et al.* is not analogous art because the search classification of *Jenkins et al.*, i.e., 235/383 is different than the search classification of an X-ray examining apparatus. For example see *Aust et al.* (U.S. 6,155,179), which has a search classification of 108/50.01. Applicant also notes that *Aust et al.* is the U.S. equivalent of DE 199 10 615, which is described in the present application, and which was cited by the Examiner.

Applicant further notes that MPEP 2141.01(a) recites that "[w]hile Patent Office classification of references and the cross-references in the official search notes are some evidence of 'nonanalogy' or 'analogy' respectively, the court has found 'the similarities and differences in structure and function of the inventions to carry far greater weight.'" See *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973). Furthermore, MPEP

2141.01(a) recites in pertinent part:

...for example, *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993) (Patent claims were directed to single in-line memory modules (SIMMs) for installation on a printed circuit motherboard for use in personal computers. Reference to a SIMM for an industrial controller was not necessarily in the same field of endeavor as the claimed subject matter merely because it related to memories. Reference was found to be in a different field of endeavor because it involved memory circuits in which modules of varying sizes may be added or replaced, whereas the claimed invention involved compact modular memories. Furthermore, since memory modules of the claims at issue were intended for personal computers and used dynamic random-access-memories, whereas reference SIMM was developed for use in large industrial machine controllers and only taught the use of static random-access-memories or read-only-memories, the finding that the reference was nonanalogous was supported by substantial evidence.)...

As stated above, whether a prior art reference is from a nonanalogous art involves (a) determining whether the reference is within the same field of endeavor, and (b) determining whether the reference is reasonably pertinent to the particular problem with which the inventor is involved. Because *Jenkins et al.* is not within the same field of endeavor, nor is *Jenkins et al.* reasonably pertinent to the particular problem, e.g. the operation of an X-ray examining apparatus, Applicant respectfully submits that *Jenkins et al.* is not analogous prior art.

Accordingly, Applicant respectfully requests that the Examiner remove the *Jenkins et al.* reference and withdraw the finality of

the Office Action.

2. Differences between Jenkins et. al and the pending claims

As alluded to above, *Jenkins et al.* is directed to a vending device with a remote electronic shopping facility, which includes an identification means. This identification means is further described in col. 2, lines 23-27 of *Jenkins et al.* *Jenkins et al.*, however, fails to teach or suggest at least:

a counterpart device...for activating said operating unit to a second different mode of operation in at least partial response to information on said identification means read by said counterpart device when said operator stops operating said X-ray examining apparatus,

as recited in independent claim 15. The Examiner alleges that *Jenkins et al.* would "naturally [activate to a second different mode of operation], when the user removes their magnetic card [that] the control unit 600 will stop the display of the main menu and disable operation of the device." *Jenkins et. al.*, however, makes absolutely no mention that the control unit 600 will stop the display of the main menu and disable operation.

In fact, *Jenkins et al.* teaches that the identification means can be, for example, a finger print, see col. 2, line 27. If a finger print is used, then one skilled in the art would appreciate that the owner of the finger would have to remove their finger in

order to use the keypad 208, and therefore the control unit 600 would not stop the display of the main menu and disable operation. Therefore, the combination of Applicant's admitted prior art and *Jenkins et al.* fails to establish a prima facie case of obviousness.

To establish a prima facie case of obviousness, three basic criteria must be met: (1) there must be some suggestion of motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) *the prior art reference must teach or suggest all the claim limitations*, see *In re Vaeck*, 947 F.2d 48, 20 USPQ2d 1438 (Fed.Cir.1991).

Accordingly, in view of the above discussion, Applicant respectfully requests that the Examiner withdraw the rejections and further the claims to issue.

Newly added claims 18-19 should be considered allowable, at least because the combination of elements within the claims is not obvious, nor anticipated by any of the cited prior art.

Conclusion

In view of the above amendments and remarks, this application appears to be in condition for allowance and the Examiner is,

Application No. 09/654,066

therefore, requested to reexamine the application and pass the claims to issue.

Attached hereto is a clean copy reflecting the changes made to the application by this Amendment.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact **Martin R. Geissler** at telephone number (703) 205-8000, which is located in the Washington, DC area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment: Version to Show Changes Made

VERSION TO SHOW CHANGES MADE

IN THE CLAIMS:

2. (THRICE AMENDED) The operator unit according to claim 15, wherein the counterpart device [(3)] is a card reader and said identification means is a card, said card reader and said card being structured such that said card reader can read said card with the card remaining attached to said operator.

3. (THRICE AMENDED) The operator unit according to claim 15, wherein the identification means [(4)] is a contacting identification device that can remain attached to said operator when said identification means is in said predetermined space, so that said identification means is automatically moved from said predetermined space when said operator leaves said operating field.

4. (THRICE AMENDED) The operator unit according to claim 3, wherein the contacting identification device [(4)] is one of a chip card and a magnetic card.

5. (THRICE AMENDED) The operator unit according to claim 15, wherein the identification device [(4.1)] is an identification device which operates without contact and can remain attached to said operator when said identification means is in said predetermined space, whereby said identification means is

automatically moved from said predetermined space when said operator leaves said operating field.

6. (THRICE AMENDED) The operator unit according to claim 5, wherein the identification device is one of a transceiver unit and a transponder which works together with the counterpart device [(3.1)] of the identification system without contact.

7. (THRICE AMENDED) The operator unit according to claim 5, wherein a non-contact link between the identification device [(4.1)] and the counterpart device [(3.1)] is maintained within a local area [(N)] proximate to said operating field.

8. (THRICE AMENDED) The operator unit according to claim 15, wherein the counterpart device [(3, 3.1)] has a respective one of a read and write mode by means of which the identification device [(4, 4.1)] is respectively one of read from and written on with respective installation- and person-specific data.

9. (THRICE AMENDED) The operator unit according to claim 8, wherein there is a read mode by means of which the identification device is read from, and wherein read data is recorded in various X-ray apparatus and is caused to be combined and stored centrally by the

identification device [(4, 4.1)].

10. (THRICE AMENDED) The operator unit according to claim 15, wherein the counterpart device [(4, 4.1)] is integrated into the operating field [(2)].

11. (THRICE AMENDED) The operator unit according to claim 15, wherein an individual operator-unit setting is accomplished by means of the identification means [(4, 4.1)], whereby the identification means of a first operator activates the operating unit to a different first mode of operation than would the identification means of the second operator.

12. (THRICE AMENDED) The operator unit according to claim 15, wherein the operator unit is cleared by the identification device [(4, 4.1)] upon the operator unit entering the second different mode of operation upon the operator moving the identification means away from the predetermined space.

14. (THRICE AMENDED) The operator unit according to claim 15, wherein a live scanner [(20)] is also connected upstream from the identification system.

15. (ONCE AMENDED) An operator unit for an X-ray examining apparatus having a monitor for displaying an X-ray image for an operator, said operator unit comprising:

an operating field for being manipulated by the operator to operate the operating unit and thereby operate the X-ray examining apparatus and the monitor; and

an identification system, said identification system including an identification means [(4, 4.1)] for being carried by the operator [(6)] and a counterpart device [(3, 3.1)] for being operatively coupled to said operating field,

wherein said counterpart device is for activating said operating unit to a first mode of operation when the operator begins to operate the operating unit in at least partial response to information on said identification means read by said counterpart device, and for activating said operating unit to a second different mode of operation in at least partial response to information on said identification means read by said counterpart device when said operator stops operating said X-ray examining apparatus.

Claims 18-19 have been added.